

### **REMARKS**

Applicants appreciate the consideration of the present application afforded by the Examiner. Claims 1-27 were pending and claims 9-17 were withdrawn from consideration prior to the Office Action. New dependent claims 28 and 29 have been added through this Reply. Therefore, claims 1-29 are pending. Claims 1 and 5 are independent. Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

#### ***Allowable Subject Matter***

Applicants appreciate that claims 3, 4, 7, and 8 are indicated to define allowable subject matter.

I.

#### ***Claim Rejections - 35 U.S.C. §102***

Claims 1, 2, 5, 6, 21, 22, 26 and 27 stand rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent No. 7,202,892 to Ogata et al. ("Ogata"). Applicants submit the Examiner has failed to establish a *prima facie* case of anticipation and traverse the rejection.

In order to establish a *prima facie* case of anticipation under 35 U.S.C. §102, the cited reference must teach or suggest each and every element in the claims. *See M.P.E.P. §2131; M.P.E.P. §706.02*. Accordingly, if the cited reference fails to teach or suggest one or more claimed elements, the rejection is improper and must be withdrawn.

Independent claims 1 and 5 recite a method and means for image-combining high output and low output image data to form combined image data; and multiplying the combined data of the high output image data and the low output image data by a total gain that depends on a scene. Applicants respectfully submit that Ogata fails to disclose at least these limitations of the claim.

The Examiner cites Fig. 20 and column 14, line 49 – column 16, line 38, as allegedly disclosing the features of the independent claims. However, the cited passages make it clear that "cE", which the Examiner has termed total gain, is instead only multiplied times the normalized mean compressed low image low'(i,j) which only applies to that image data y(i,j) that has passed thru the low pass filter 35. The results of those multiplications by cE then result in p(i,j) that is

subtracted from the combined image data. Applicants submit that the gain “cE” described in Ogata is not a compensation factor that depends on a scene. Ogata merely describes “acquiring a plurality of images under different exposure conditions, compensating the levels of the plurality of images based on the exposure conditions and synthesizing the plurality of compensated images” (for example, see claim 1 of Ogata). The gain “cE” is a factor relating to “compensating the levels of the plurality of images.” That is, the gain “cE” depends upon exposure times, which are different from each other and during which the plurality of images for the same object (the same scene) are acquired, respectively. Therefore, “depending on the exposure time” does not correspond to “depending on a scene.”

Therefore, at least because Ogata fails to teach or suggest each and every claimed element, independent claims 1 and 5 are distinguishable from the prior art. Claims 2, 6, 21, 22, and 26-29 depend from claims 1 and 5, directly or independently. Therefore, for at least the reasons stated with respect to claims 1 and 5, claims 2, 6, 21, 22 and 26-29 are also distinguishable from Ogata.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §102(b) be withdrawn.

Claims 18-20 and 23-25 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent No. 7,202,892 to Ogata et al. (“Ogata”) in view of U.S. Patent No. 5,745,808 to Tintera. Applicants submit the Examiner has failed to establish a *prima facie* case of obviousness and traverse the rejection.

The Examiner cites Figures 3A-3B, Column 5, lines 54-58 and Column 6, lines 39-56 in support of the proposition that Tintera teaches a total gain that depends upon scene classification that is selected from a group of predetermined scene classifications and that scene classification is based upon data detected by one or more sensors sensing the scene. Tintera teaches that the user selects between an “auto” or a “sports” mode, but thereafter the exposure table is accessed on the basis of the current light level measurement without multiplying combined image data by a total gain.

To the contrary, Applicants respectfully submit that Tintera does not multiply any image data by a total gain that depends upon a scene and therefore cannot be relied upon to suggest

such a feature to make up for its absence in the disclosure of Ogata with respect to either claim 1 or claim 5. In addition Tintera also fails to suggest or teach that scene classification is determined based upon data detected by sensors, and therefore cannot remedy the failure to teach such a feature with respect to claim 19.

Therefore, at least because Ogata and Tintera fail to teach or suggest each and every claimed element, dependent claims 18-20 and 23-25 are distinguishable from the combination of Ogata and Tintera.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §103(a) be withdrawn.

### **Conclusion**

All objections and rejections raised in the Office Action having been properly traversed and addressed, it is respectfully submitted that the present application is in condition for allowance. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Notice of same is earnestly solicited.

Prompt and favorable consideration of this Amendment is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Paul T. Sewell, Registration No. 61,784, at (703) 205-8000, in the Washington, D.C. area.

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By 

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